IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 32 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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POPATBHAI DAMAJIBHAI SOLANKI - Applicant(s)
Versus
CHUNILAL RAMJIBHAI - Opponent(s)

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Appearance :
MR DHARMESH V SHAH for Applicant(s) : 1,
MR MAULIK J SHELAT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/02/2006

ORAL JUDGMENT

1. Tenant – original defendant in H.R.P.C.S. No.1762 of 1996 is before this court against decree of eviction, which was passed against him by the learned Judge of the trial Court on all three grounds, namely, tenant is in arrears, Landlord has bona fide requirement of the

premises and that the tenant has acquired suitable accommodation, was confirmed by the Appellate Bench of the Small Causes Court, Ahmedabad in Civil Appeal No.58 of 2002 on the ground of tenant being in arrears whereas the other two grounds were not believed by the Appellate Bench.

2. Mr. D.V. Shah, the learned advocate appearing for the petitioner – tenant invited the attention of this court to relevant discussions in para 8, 9 of the learned trial Judge on the point of tenant being in arrears.

The learned advocate strenuously submitted that the court below has committed an error in holding that the tenant is in arrears of rent. He submitted that when the learned trial Judge has raised an issue of “standard rent” and decided the same while deciding the suit, the learned Judge could not have held that the tenant was in arrears. He submitted that after determining the standard rent in the judgment itself, the learned Judge ought to have granted time to the tenant to deposit the arrears if any.

Mr. Shelat, the learned advocate appearing for the respondent herein – the landlord – the original plaintiff

submitted that the defendant – tenant has filed written statement which is at Exh-10 and in para 5 of the said written statement, the defendant – tenant admitted that the contractual rent of the premises was Rs.50/-, the tenant has not said a word about the rent being exorbitant and not being the standard rent of the premises. He further submitted that, the only dispute raised by the defendant is that the said rent included all taxes and that the liability to pay tax was on the landlord, whereas the electric burning was to be borne by the tenant. The learned advocate Mr. Shelat submitted that when there was no dispute of the standard rent, even if the issue of standard rent was raised, that would not help the tenant. The liability to pay the rent regularly and not to be in arrears persisted. He submitted that the learned Judge has rightly held that the tenant was in arrears and passed the decree on that ground, which is erroneously reversed by the learned Appellate Bench.

3. The learned advocate appearing for the petitioner – tenant invited the attention to the calculation part of the arrears. The learned advocate submitted that the learned trial Judge has finally come to the conclusion that the tenant was in arrears to the tune of Rs.400/-.

The said finding does not warrant an interference in light of the submissions made hereinabove. The submissions made by the learned advocate for the petitioner that the standard rent was fixed for the first time at the time of final adjudication of the suit, after which the learned Judge did not grant any time to deposit the arrears if any do not warrant an acceptance by this court. The learned advocate for the petitioner submitted that if the learned trial Jude had taken that trouble, the learned Judge would not have fallen into an error of holding that the tenant is in arrears and would not have passed an eviction decree on that ground.

4. The learned advocate for the petitioner submitted that he is assailing this ground alone because on other two grounds, the learned Appellate Bench has already reversed the decree for eviction.

5. He submitted that even the Appellate Bench has erred in holding that a decree for eviction is required to be confirmed on the ground that the tenant is in arrears.

6. Despite his best efforts, the learned advocate for the petitioner could not dislodge the concurrent findings recorded on the point of “tenant being in arrears” and therefore, this court finds that this revision

application has no merit.

7. At this juncture, Mr. Shah, learned advocate for the petitioner relied upon a decision of this court in the matter of **Naranbhai Nathabhai Koli V. Modhia Panalal Maganlal** reported in 1982(2) GLR page 98. The learned advocate submitted that when the court decides standard rent at the time of deciding the suit, the tenant does not know what the standard rent is and in that event, time is to be granted to the tenant to pay up the arrears if any.

The learned advocate while relying upon the said decision, missed the facts of the case, which were considered by the learned Judge. The facts were different than the facts of the case on hand. In that case, there was no separate dispute about the standard rent was taken by the tenant but then the point was raised in the written statement. That being so that point was decided by the court at the time of deciding the suit, holding that;

> “.. .. ..debar the tenant of the benefit of Section 12(3)(b) there must be a clear 'adjudication' either earlier of in that proceeding itself about what the 'standard rent' is. Absence of

the dispute of the standard rent for the purpose of the Section 12(3)(a) has got a connotation different from the one of the term 'existence of a dispute' for the purpose of Section 12(3)(a).. .. ..”

In the case on hand, para 5 of the written statement clinches the issue. The tenant has admitted the contractual rent and has raised only one dispute about the liability of the tax, which cannot be termed as the dispute of the standard rent.

The court perused the written statement and besides to be doubly sure perused “the reply” to the notice also. Unfortunately the contents of para 5 of the notice and para 5 of the written statement are verbatim the same. The only difference in both these paras are that in reply to notice, it is mentioned that it is in reply to para 1 of the statutory notice, whereas in written statement, it is mentioned that it is in reply to para 1 of the plaint. That being so, there remains no doubt that there was no dispute about the standard rent.

This court is not required to and has therefore, restrained itself from going into as to how and why an issue regarding the standard rent was raised by the learned Judge of the trial court. The Appellate Bench has

recorded in para 2 (two paragraphs are given same para numbers, later paragraph which is numbered as para 2) that;

> "it is admitted in para 5 of the **written statement that there is no dispute that rent is Rs.50/- per month** what is contended is that it is included of all kind of tax and liability to pay education cess is also on the landlord – plaintiff.. .. .."

Thus, it is clear that the courts below have mechanically approached the problem and have raised issues about the standard rent, though it is noticed by the learned Judge as well as the learned Appellate Bench that the rate of rent is admitted by the tenant.

8. In view of the aforesaid discussions, this court finds no reason to interfere with the concurrent findings recorded by the courts below on the point of tenant being in arrears and therefore, this revision application fails and the same is dismissed with no order as to costs. Rule is discharged. Interim relief granted earlier is vacated. The office is directed to send the record and proceedings of the courts below forthwith.

(RAVI R. TRIPATHI,J.)

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